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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 12, ORIGINAL

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

REPLY BRIEF FOR THE UNITED STATES

The State concedes (p. 35) that the tax sales were invalid.

There remains the question whether the lands were subject to a lien for taxes. The United States has pointed out (p. 10) and the State concedes (see e. g. pp. 2, 4, 8, 20–26, 28) that, when the three tracts were acquired, the taxes were still unascertained. Consequently, as the United States argues (p. 10), no taxes had been imposed when it acquired the lands. The State does not contend otherwise. On this point, the United States concludes (p. 11) that, since its property is not subject to state taxation, the State could not levy and

assess for the purpose of taxing the United States or of making the lands primarily or secondarily liable for the taxes. We do not understand the State to take issue with that conclusion.[1]

The United States then shows (p. 12) that the State's lien statute does not do away with the necessity of imposing taxes, i. e., levying taxes and assessing values. This the State does not deny. And, as the United States demonstrates (pp. 12–15), the lien is therefore necessarily inchoate until the taxes are imposed. The State recognizes this (pp. 21, 32, 34a). The Government concludes (p. 15) that "because it lacked power to impose any taxes upon the lands of the United States, the State was similarly powerless to impose tax liens upon those lands or, more precisely, to transmute what were 'inchoate' into 'fixed and final' charges." With this conclusion the State takes issue.

The opposing contention of the State (pp. 19–33, 37) is that, notwithstanding the taxes were not imposed and the liens were consequently inchoate, the lands were liable because, as it reads its statutes and decisions, the legislature intended to make

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[1] However, the State seems to suggest (p. 33) that the federal immunity from state taxation relieves only from "undue" burdens imposed by the State. The suggestion is unwarranted. The immunity of the United States from taxes imposed upon it by a State "is absolute, resting upon an 'entire absence of power.'" See *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 128.

them liable. Whether the state statute purports to impose a lien for taxes is, of course, a question to be determined by its terms and the decisions of the Alabama courts construing it. That question does not exist here. Unquestionably, section 372 purports to impose a lien as of October 1, 1936. But this fact is but the beginning of the inquiry, not its end.

Thus, the sole question presented by the State's contention is whether, *since the State of Alabama chooses to do so,* it may subject the property of the United States to a liability for state and county taxes. The obvious answer is that it may not. Whether the property of the United States shall be taxed under the laws of a State "depends upon the will of its owner, the United States, and no State can tax the property of the United States without their consent." *Van Brocklin* v. *State of Tennessee,* 117 U. S. 151, 175, 180; *Witherspoon* v. *Duncan,* 4 Wall. 210; *Clallam County* v. *United States,* 263 U. S. 341, 345; *Lee* v. *Osceola Imp. Dist.,* 268 U. S. 643, 645; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389.

We are, therefore, remitted to the reasons upon which the United States has contended that there was no liability for taxes when it acquired the lands and that subsequent imposition of such liability would amount to a tax upon the property of the United States. For the reasons given

and upon the authority of the cases cited, it is submitted that the liens are invalid and clouds upon the titles of the United States.

Respectfully,

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